AL-TAHAKUM

MASAAIL PERTAINING TO SEEKING JUDGEMENT FROM THE TAWAGHEET

WRITTEN BY SHAYKH ABU BARA'A AS-SAYF

بسم الله الرحمن الرحيم

Masāil pertaining to tahākum/seeking judgement from the taghūt

All Praise is [due] to Allah, Lord of the Worlds, and may the prayers and peace be upon the best of Allah's creation ﷺ, and upon his family and his faithful companions, and upon those who follow them in goodness until the Day of Gathering and ad-Deen..

■ Seeking judgement (from the taghūt) for darurah/necessity, to defend ones rights:

These are few masāil/matters which relate to the ruling of seeking judgement from the courts with man-made laws of the taghūt.

Seeking judgement from the taghūt. He (i.e. taghūt), is the one who rules and judges between the people with other than the laws of Allah, like man-made democratic laws, or with traditional or customary rulings of tribes and clans which contradict the Shari'ah. This becomes kufr if done according to the following:

a) To seek his ruling in worldly or religious matters in order to abide by the ruling he passes, and to act in accordance with it, like the rulings of halal/permissible and impermissible/haram matters, and other such rulings which only Allah (Azza Wa Jal) Alone has the right to legislate.

b) To seek his ruling and judgement, whereby his decision is sought for worldly or religious related matters, in which there is an argument and dispute (between two parties), in order to abide by the judgement he passes and to act in accordance to it.

If one seeks the judgement of the tāghut from this perspective, then this is tahākum/seeking of judgement which is kufr, which becomes

such that he believes in taghūt and worship of it, and disbelief in Allah (Azza Wa Jal) and Shirk with Him.

Alllah (Azza Wa Jal) says, *{O you who have believed, obey Allāh and obey the Messenger and those in authority among you. And if you disagree over anything, refer it to Allāh and the Messenger, if you should believe in Allāh and the Last Day. That is the best [way] and best in result. Have you not seen those who claim to have believed in what was revealed to you, [O Muḥammad], and what was revealed before you? They wish to refer legislation to ṭāghūt, while they were commanded to reject it; and Satan wishes to lead them far astray.}*

[Nisa:59-60]

From the sort of tahākum/seeking judgement sought from the taghūt today, that is considered kufr, which the mukallif/sane and mature person does so intentionally and willingly, is: to raise a lawsuit/matter to the taghut judge, either directly himself, or through hiring a lawyer to raise the matter and to act as a representative or an agent on his behalf.

■ Going to the courts of the taghut in order to defend oneself before a judge, if one has been summoned:

Since seeking judgement from the taghūt is from kufr- billāh/disbelief in Allah and Shirk with Him in worship, then it is not permissible for the mukallif/sane mature one, to forward himself for this deliberately and willingly, unless he is forced and is under ikrāh mulji'/coercion, (i.e. when someone powerful persuades one to commit kufr by using force or threat), from which there is no escape. Ikrah mulji', according to the majority of the scholars, is ikrāh which leads to killing, or damage and injury to limbs, or severe torture which the person cannot bear, by which he is no longer able to make a choice.

Ash-Shafi'i (may Allah have mercy on him) considers imprisonment to be from ikrah mulji', as though he meant very long term imprisonment which is intolerable, or an imprisonment one cannot escape from until death or until he commits kufr.. and Allah knows best. The is due to the statement of Allah, *{Whoever disbelieves in Allāh after his belief, except for one who is forced [to renounce his religion] while his heart is secure in faith. But those who [willingly] open their breasts to disbelief, upon them is wrath from Allāh, and for them is a great punishment.}* [Nahl:106- 107]

The condition for permissible ikrah mulji' is to show kufr outwardly, while the heart is at rest with Iman, and the people of knowledge mentioned the following with regard to the conditions of ikrāh:

1- That the mukrih (with a kasra), (i.e. the one in authority carrying out the threat) is able to carry out his threat to kill, or to cause damage to limbs, or to inflict severe torture which one cannot bear, or has the ability to give a very long-term prison sentence, by which the person becomes a mukrah, (with a fatha), i.e. (he falls under ikrah) and is helpless.

2- That the mukrah/one under ikrah is unable to remove the ikrah from himself, even if done so by fleeing or escaping. If he is able to flee from the the one inflicting the harm, but does not flee, then he is not considered a person under ikrah, and if thereafter he falls into kufr, then he is a disbeliever and is not excused with ikrah.

These are like the ones whom Allah (Azza Wa Jal) informed us about, in the verse of Surah An-Nisa, who came out to fight the Prophet ﷺ and his companions in the ranks of the mushrikeen, although (some) were claiming Islam in Makkah before, but they did not make hijrah and did not flee from between the mushrikeen while they were able to do so, and thus, when they were forced to go out to fight against the Prophet ﷺ, this was not considered ikrah for them and they entered Hellfire.

Allah says: *{Indeed, those whom the angels take [in death] while wronging themselves- [the angels] will say, "In what [condition] were you?" They will say, "We were oppressed in the land." They [the angels] will say, "Was not the earth of Allāh spacious [enough] for you to emigrate therein?" For those, their refuge is Hell - and evil it is as a destination.}* [An- Nisa:97]

It has been reported in Sahih al- Bukhari, on the authority of ibn Abbas (may Allah be pleased with him), that some Muslim people were with the mushrikeen increasing the number of the mushrikeen against Allah's Messenger (.(ﷺAn arrow used to be shot which would hit one of them (the Muslims in the company of the mushrikeen) and kill him, or he would be struck and killed (with a sword)." Then Allah revealed, *{Verily! as for those whom the angels take (in death) while they are wronging themselves (by staying among the disbelievers..},* the Verse.

3- That the one carrying out the threat, will do so imminently without delay. Hence, if he says for example, 'commit such and such an act (of kufr) or I will kill or torture you after a month', then he is not considered to be under ikrah until the time of that threat arrives.

4- That the mukrah/one under ikrah, does not add more than what was asked of him under ikrah. If he adds any further action (of kufr), which the one in authority of carrying out the threat did not ask of him, then he is a disbeliever.

It is necessary for the scholar or student of knowledge, who fears Allah and His punishment, to look into and investigate each case he is asked about, of seeking judgement from the taghut. Hence, before he permits tahākum from the taghūt while making ijtihād for a specific case, he must carefully observe whether the person has reached the level of

ikrah which permits him to commit the act of kufr, while his heart is at rest with Iman/faith or not.

■ It is impermissible to make tahākum/seek judgement from the taghut, for a matter which has not reached the level of ikrah, such as a darurah/necessity:

The difference between darurah/necessity and ikrah/compulsion:

Darurah/necessity is a matter in which haram/forbidden things are permitted, which are less than kufr, such as eating dead meat for the one who fears death by starvation and finds nothing to eat but the dead meat, and like drinking wine for the one who chokes on food and finds nothing but wine to bring down the food.

Necessity is mentioned in the statement of Allah, *{He has only forbidden to you dead animals, blood, the flesh of swine, and that which has been dedicated to other than Allāh. But whoever is forced [by necessity], neither desiring [it] nor transgressing [its limit], there is no sin upon him. Indeed, Allāh is Forgiving and Merciful.}* [Al-Baqarah:173]

As for ikrah, it is that in which a person is permitted to commit an action of kufr if he is forced to, while his heart is at rest with Iman.

Allah (Azza Wa Jal) says, *{Whoever disbelieves in Allāh after his belief, except for one who is forced [to renounce his religion] while his heart is secure in faith. But those who [willingly] open their breasts to disbelief,*

upon them is wrath from Allāh, and for them is a great punishment.} [Nahl:106]

Allah (Azza Wa Jal) has not allowed a mukallif/a sane adult, to intentionally commit kufr or Shirk, except the one under ikrah mulji'/compulsion from which he cannot escape, and no other category is allowed.

Therefore, committing actions of kufr and Shirk to preserve a necessity of religion is not permissible, because preserving the religion takes precedence over preserving other necessities, such as the soul, wealth and mind when necessities conflict, except in that which Allah has allowed for His servants - out of mercy to them - like ikrāh mulji'/compulsion.

If for a necessity, it is impermissible to commit immoral acts which are less than kufr and shirk, such as the actions of the people of Prophet Lut, and incestuous fornication, then how is it permissible for one to commit the greatest sin by which Allah Subhānahu Wa- Ta'āla is disobeyed, from making shirk with Him and worshiping taghūts besides Him by seeking judgment from them??!

■ It is prohibited to seek judgement from the courts of the taghūt, due to the absence of Shari'ah courts:

It is not allowed to seek judgement from the courts of the taghūt just because there are no Shari'ah courts available.

This is because Allah (Azza Wa Jal) did not limit or restrict the impermissibility of seeking judgement from the taghut and the kufr of the one who does so, to the availability of Shar'iah courts. Therefore, it is impermissible to seek judgement from courts which rule by man-made laws/status laws, if there are no Shari'ah courts available.

Since seeking judgement from the taghūt is from kufr and Shirk, then it is impermissible to commit Shirk deliberately in any given place, time or situation, except for the one who is under ikrāh mulji'/compulsion from which there is no escape.

As for the matter, that the verses of tahākum to the taghut were revealed while both parties were present; i.e. those who ruled by the taghūt and those who ruled with Shari'ah laws, and that was the Prophet ﷺ himself, then this fact does not restrict the forbiddance of tahākum to the taghūt to that situation only, in which these verses were revealed, and in (the science of) usool/principles, this is not by which rulings are restricted.

This is because the verses of the impermissibility of Shirk and kufr, and the kufr of the one who commits this deliberately without ikrāh, were generally revealed, in every time and place.

Furthermore, if we generalise this claim, and apply it on rulings regarding other issues, it would inevitably necessitate corrupt results, and its corruption is enough to refute such a false restriction!!

Like, if we said, for example, that the verses of the obligation of j1had upon each individual, and the impermissibility of its abandonment was revealed when dar al-Islam existed in Madinah, and dar al-kufr was also present, then it would necessitate that due to the absence of dar al-Islam, it would be permissible for every individual to abandon j1had, due to the absence of dar al-Islam, because j1had is not fardh/obligatory, as the (present) situation differs from when these verses were revealed!!

Therefore, this claim is corrupt and false, and it is essential to know the corruption (it will cause) in the deen of Islam.

■ To defend oneself before a taghūt judge with permissible means, after being summoned, is not considered tahākum which falls under Kufr:

To defend oneself with permissible means, by presenting proofs and evidences before a taghūt judge, if the person is arrested and escorted there, does not enter into the definition of tahākum/seeking judgement which is kufr. Likewise, if he is summoned by the taghūt judge, due to a lawsuit filed against him, and the muslim fears that if he is not present to defend himself or his right before the taghūt judge, with permissible means, they would authorise punishments which Allah has not sent down any proof of, or that he will lose his rights by aggression and injustice, then this also does not enter into the definition of seeking judgement from the taghūt.

This is because the person in this situation did not request the judgement of the taghut, and did not strive for it's request, nor wanted it, but rather, he was summoned and overpowered by the taghūt, through someone else.

Thus, his going to defend himself or his right before the tāghut judge, with permissible means, is in reality, him defending and protecting himself against the oppressive unjust rulings and authority of the taghūt upon himself and his right, especially if they will punish him with rulings of the taghūt if the person does not attend the court sittings set for him.

And Allah (Azza Wa Jal) has commanded the muslims, not to allow the disbelievers a way to overcome them, and to close every door which leads to that.., as Allah (Azza Wa Jal) says*, {and never will Allāh give the disbelievers over the believers a way [to overcome them].}* [Nisa:141]

This command has come in the khabar/descriptive form (i.e. grammar analysis), that the muslims should not allow the disbelievers a way to overpower them in authority.

Furthermore, additional evidence which shows that it is permissible to defend oneself before a taghut, using permissible means, by presenting proofs and evidence by which the muslim is able to repell their injustice and authority, is what is mentioned in the story of Prophet Yusuf (may Allah send upon him mercy), in the incident with the wife of al-'Azeez, after she sought to seduce him..

So when the taghūt Aziz came, the wife of al- Azeez raised a false unjust claim against Yusuf, and intended to overpower him with the rulings of imprisonment and torture, and this is shown in her statement, *{"What is the recompense of one who intended evil for your wife but that he be imprisoned or a painful punishment?"}* [Yusuf:26]

So Yusuf (may Allah's peace be upon him) defended himself before this taghūt, in order to repel this false accusation, so that those in authority and power do not pass their aggressive and unjust rulings on him, and that is evident from his statement, *{"It was she who sought to seduce me."}.* [Yusuf:26]

And Allah (Azza Wa Jal) said about His Prophets, *{These ˹prophets˺ were ˹rightly˺ guided by Allah, so follow their guidance.}* [Al-An'am:90]

■ It is not permissible to seek judgement from the taghūt, even if their rulings are similar to the laws of Shari'ah:

It is impermissible to make tahākum/seek judgement by the rulings of the taghūt which resemble Shari'ah, such as personal status laws (in some countries), even if the taghūt claims that he derives these laws or others, from Islamic Shari'ah.

Tahākum/seeking judgement with laws of the taghūt which are similar to shar'i laws, in reality, is tahākum to the taghut, not to Allah and His Shari'ah, because Allah has (declared) disassociation from this type of ruling.

It has been reported in Sahih Muslim, on the authority of Abu Hurayra, that he said, Allah (glorified and exalted be He) said: "I am so self-sufficient that I am in no need of having an associate. Thus he who does an action for someone else's sake as well as Mine, I discard him and his shirk." [Narrated by Muslim]

And in a narration in ibn Majah, in his Sunan; "I will have that action renounced by Me to him whom he associated with Me."

So Allah (Azza Wa Jal) declared Himself to be free from every action a person does for Allah, in which he also associates another besides Him.

Likewise the case of man made laws in the courts of the taghūt, which the kuffar have set, wherein they have combined the laws of Allah

along with laws of the taghūt of mankind. Allah is free from this, and this type of legislation cannot be attributed to Him, and whoever seeks judgement in that, or from a part of it, then indeed he has made tahākum to other than the Shar'iah of Allah, and has sought judgement from the taghūt, even if it is similar the pure Shari'ah.

And this is close to the statement of Allah, regarding the early mushrikeen and their rulings of their crops and cattle: *{And they [i.e., the polytheists] assign to Allāh from that which He created of crops and livestock a share and say, "This is for Allāh," by their claim, "and this is for our 'partners' [associated with Him]." But what is for their "partners" does not reach Allāh, while what is for Allāh - this reaches their "partners." Evil is that which they rule.}* [Al-An'am:136]

So Allah is free and discards every type of rulings in which His rulings are mixed and have been combined with other ruling, rather Allah is free for whom it was associated.

And this was the case of al-Yasiq from the Tatars/Mongols, (al-Yasiq was the law Genghis Khan wrote for his progeny to follow.) It became a followed way with which they would seek judgement, and Genghis Khan had taken some of the rulings in al-Yasiq from the religion of Islam, and yet tahākum by it, even one ruling, was regarded kufr by Ijmā'/consensus, as reported by Ibn Kathir (may Allah have mercy on him), in (Al-Bidayah wa-Nihayah/13)

Furthermore, the scholars at that time did not differentiate between seeking judgment from Yasiq in what was similar to the Islamic Sharia, and seeking judgment from Yasiq with regard to other rulings. Rather, they all agreed that it was clear and explicit kufr.

The same applies to the abrogated laws, such as those in the distorted books of Tawrah and Gospel/Injeel, even though they contain some rulings that are similar to the law of Allah - such as stoning a married adulterer in the Tawrah -yet even with this (similarity to Allah's law), the scholars, such as Ibn Hazm, Ibn Taymiyyah, Ibn al-Qayyim and others, have reported the consensus, that referring to it (i.e. abrogated laws) for judgment is clear and explicit kufr, and they did not differentiate between the ruling on seeking judgment from what resembled the law of Allah, and the ruling on seeking judgment from other rules of these distorted laws.

So making tahākum with man-made laws, which are similar to Shari'ah, is in fact tahākum to the taghut and is kufr.

■ The mas'alah of appointing a lawyer/attorney, to defend a muslim who is imprisoned by the taghūt:

The issue of appointing a lawyer/attorney, to defend a muslim who is imprisoned by the taghūt, has details and depends on the following:

1- The type of case or lawsuit, and whether it would result in the death penalty, or a long term prison sentence or not.

2- Depending on what the lawyer himself is able to do, and will he defend the accused/defendant by committing kufr of filing a lawsuit to seek a ruling from the taghūt, (i.e. makes tahākum), or will he defend him by uttering statements of kufr during the court sitting.

Or will he only decrease the sentence or remove it altogether, from the accused, by way of payment (or bribes).

This differs from one country to another. Rather, sometimes this differs from one court to another, and generally, if there is no action of kufr involved in appointing a lawyer, but it is only to pay an amount of money to the judge in order to remove the ruling of the taghut from this imprisoned muslim, then there is nothing wrong with that, In Sha Allah.

However, when appointing a lawyer, if there is ann action of kufr involved, such as filing a new lawsuit, or requesting an appeal against the ruling from the judge, (i.e. tahākum), or he would defend the accused by statements of kufr, by which he honours and revers the man-made laws, and honours the taghūt judges, or defends the prisoner according to the rules and regulations of the taghut, then this is not permitted, unless the lawsuit which the lawyer is defending the muslim prisoner in, would lead to the death penalty, or a very long-term prison sentence, according to Imam Ash-Shafi'i, which one cannot tolerate, whereby he has no choice and the prisoner becomes under ikrāh. Or in such a case where during the imprisonment, the prisoner faces intolerable torture, and if one does not hire a lawyer for him on his behalf, it would lead to the death penalty or long prison sentence being carried out.

In this scenario, there is no difference in who appoints the lawyer, whether the imprisoned person does so himself or someone he has appointed, such as a family member. This is because the appointing of a lawyer in this situation is permitted by Shar'iah, and is something Allah has allowed for the one under ikrāh.

Consequently, the one whom the prisoner appointed to hire a lawyer on his behalf, from his family member or others, has done so in a permissible matter, which the Shari'ah has allowed for him, and so they are permitted to aid him in this and are not sinful. This is due to the statement of Allah*, {and cooperate with one another in goodness and righteousness}* [Al-Màida:2].

Otherwise, it is not permissible to commit kufr on purpose, except under the condition of ikrāh mulji, accepted by Shar'iah..

And Allah is the Most High and Knows best.

■ Explanation of the mas'alah of refuting a charge/accusation before the taghut:

All Praise be to Allah, the Lord of the worlds, and peace and blessings be upon the best of Allah's creation ﷺ, his family and companions.

Regarding the the ruling of the mas'alah of going to the courts of the taghūt to defend oneself, or one's rights, or objecting to injustice when the muslim is summoned to the courts of the taghut, and due to fear of the weak oppressed muslim upon himself, from the overpowering of the taghut, and fear of the unjust rulings being passed upon himself or his wealth. Does this enter into tahākum/seeking judgement from the taghūt in the absolute sense.

This matter I will explain, after seeking help from Allah, in several points:

The First: What is the linguistic and Shar'i definition of tahākum/seeking judgement?

So, (judgment on something is a branch of the imagination), as is the principle of fiqh. (i.e. To give a hukm/ruling on something, it is taken from a perspective of how the matter is understood.)

When we have fully understood the definition of tahākum/seeking judgement and what its limitations are, only then is it possible to understand what is included in it and what is not, with regard the conditions and actions of those involved.

All the definitions of tahākum in the linguistic dictionaries revolve around the meaning that it is; "to raise a matter to the one who has authority to rule, and to seek his judgment in order to abide by it, to act upon it and to commit to it."

It has been mentioned in mu'jam al- Waseet (dictionary); (to make judgement); 'the thing or the matter was binded and became the decisive rule, and two disputing individuals came to the ruler and raised their dispute to him, and in that thing or matter, he disposes of it as he wills. It is said, 'he judged in the matter of so-and-so's wealth and ruled over his affair'. [End]

And in the language of the Arabs; 'he called upon him for judgement, 'called upon him', as in the hadith, "and from You I seek judgement", meaning, 'I raise the judgement to you and there is no judgement except Yours.'

Therefore..

Whoever does not request judgment from the taghūt in order to abide by it and does not seek it, then it is not said, that he sought tahākum/judgement, neither according to the linguistic meaning, nor Shari' meaning, even if he was present in the place where the ruling of the taghut took place and he heard his judgments and rulings. This is like the ones who are arrested and judged in the courts of taghut, so they are not called mutahākimeen/ones seeking judgement, because they did not request for the ruling of the taghut, nor did they seek it in order to abide by it and to act upon it, but rather, the taghūt imposed his judgments upon them, and they could not escape from it because they are imprisoned.

The Second: statements and actions which bear other possible indications/signs, are judged according to the intent of the perpetrator, along with observation of his condition:

No doubt, the scholars (may Allah have mercy on them) continue in agreement of this great principle regarding the mas'alah of ruling upon statements and actions and those who commit them, and their distinguishing between that which has explicit signs and indications, and between that which bear other possible indications. They would not pass ruling upon the one who comes with something (an action or statement) which has other possible indications, except after looking into his intention and purpose for the action or statement which bears other possibilities, whether in matters of kufr and Iman, or matters of contracts, vows, divorce, emancipation and other issues of judgment.

The following are some of their statements:

1- Imam Ash-Shafi'i mentioned in (al-Umm/297/7): "The (approved) statement, regarding that which bears something other than what is apparent, is his (own) statement (i.e. the one who uttered it).

2- Al- Qādhi Shahāb ad-din al- Qurāfi said in his book al-Furūq (195/2), "Everything which has an apparent (meaning) is taken as the apparent, except when a contrary (meaning) arises, or a rājih/selected dominant correct meaning for that apparent (is present), and everything that does not have an obvious apparent (meaning), then none can dominate another possible (meaning) except with a rājih shar'i." (i.e. unless a selected correct opinion in Shar'ia is given). [End of quote]

And the rājih shar'i (meaning) in the right of the one who came with a statement or action which indicates other possible meanings is: to look into and verify his aim, purpose and intention of this (act) which bears possible meanings, as it has been evidenced in the hadith mentioned previously, in the story of Bani Jadthima, and the disapproval from the Prophet ﷺ, of Khalids killing and capturing them without clarifying their intention and purpose of the word "Saba'naa, which is a word with another possible meaning.

3- An-Nawawi mentioned in al-majmoo' (49/1), in what he reported from as-Saymiri and Khateeb: "And if he is asked (i.e. the mufti) about someone who said such and such a statement which bears other

possible meanings which are not kufr, then it is upon the Mufti to say; "this one must be asked what he intended of the statement he uttered, and if he intended such and such, then the response is such, and if he intended such and such, then the response is such." [End of quote] (i.e. the response of the qādhi is dependent upon what the person intended if the statement or action has more than one possible meaning).

4- Shaykh al-Islam Ibn Taymiyyah was asked regarding the one who curses the honourable one of the Ahl Al-Bayt by saying, "may Allah curse him, and the one who honored him." He, (may Allah have mercy on him) answered in majmoo' al- fatāwa (39/531): "This statement on its own is not a clear insult for which the person should be killed, but rather we enqire about the part of the statement "the one who honoured him". If it has been proven, after enquiry, or from what his condition reveals, or from his words that he intended to curse the Prophet ﷺ, then he must be killed, and if this is not proven.."- until his quote- "..then he cannot be killed by the agreement of the scholars." [End of quote]

5- Ibn al- Qayim stated in A'lām al-mawqi'een (228/4) while speaking about the rulings of the muftis: "He is not allowed to make fatwa in matters of statements, oaths, wills/bequeaths, and other such matters which relate to a word which he has grown accustomed to in understanding, without knowing the custom of the people of that area, and their usage of this during speech. So he must accept what it bears of meaning according to what they know of and are accustomed to (of this word), even if it is contrary to the reality and origin of the

(meaning) of the word. If he does not do so (as stated), he will stray and lead astray." [End]

Some examples of this type:

1- The term “Râ’ina!” [Herd us!], which was said to the Prophet ﷺby muslims with the (intended) meaning being, 'listen to us', and the Jews used the same word to the prophet in the sense of (being reckless/thoughtless), with the intent of insulting and cursing him, which is an insulting attack to the religion of Allah.

Allah (Azza Wa Jal) said: {Some Jews take words out of context and say, “We listen and we disobey,” “Hear! May you never hear,” and “Râ’ina!” [Herd us!]—playing with words and discrediting the faith. Had they said ˹courteously˺, “We hear and obey,” “Listen to us,” and “Unẓurna,” [Tend to us!] it would have been better for them and more proper. Allah has condemned them for their disbelief, so they do not believe except for a few.} [4:46]

So Allah (Azza Wa Jal) prohibited the muslims from saying this word to the prophet ﷺ, so not to give the Jews a way to insult the prophet ﷺ.

Allah (Azza Wa Jal) said*: {O believers! Do not say, “Râ’ina.” [Herd us!] But say, “Unẓurna,” [Tend to us!] and listen ˹attentively˺. And the disbelievers will suffer a painful punishment.}* [2:104]

So the word “Râ’ina” bears both meanings. Hence, those who said it to the prophet ﷺwith the permissible meaning, before they were prohibited- were believers, and those who said it with the the other meaning which bears the meaning of abuse and insult, increased their level in further kufr, and they were the jews."

Therefore, when the believers said this word to the Prophet ,ﷺit was not kufr, because their intention and purpose was not the same as that of what the jews had intended by the same word.

So, the determining factor which differentiated the hukm/ruling between the believers and Jews, was the intention and purpose of those who used it, because the word indicated other meanings, and was not considered kufr/blasphemy except in the case of those who said it with the purpose of insult and abuse to the Prophet, as did the Jews.

2- It has been narrated in Sahih al-Bukhari and others, on the authority of Ibn'Umar (may Allah be pleased with them) said: "The Prophet sent Khalid bin al-Walid to Bani Jadhima and he summoned them to accept Islam. When they did not express their acceptance of Islam properly but began to say, “Saba'nā Saba’na, (i.e. We have changed our religion, we have changed our religion.)” Khalid began to kill them and take prisoners, and he handed a prisoner to each one of us. But when a day came when Khalid ordered each of us to kill his prisoner, I said, “I swear by Allah that I will not kill my prisoner and that not one of my companions will kill his prisoner till we come to the Prophet.” When we mentioned the matter to him he raised his hands and said twice, “O

Allah, I declare myself innocent in your sight of what Khalid has done,” twice".

So, Bani Jadhima, who were a tribe from the Arabs, wanted to enter Islam, and they said the word “Saba’na”, which meant, according to their custom and intention, that they had left their religion and entered into the religion of Islam. But, because the word “Saba’na”, had other possible meanings, and from its meaning, it implies the religion of the Sabians, who were a sect of Jews and Christians who worshipped angels or stars and planets ..thus, it indicated kufr and shirk..

Khalid, (may Allah be pleased with him), who was one from among the Quraysh, and this (word) was on their tounge and in their language - understood it to mean kufr, and thus took the action of killing and capturing them without giving any consideration to their intention and purpose and of the meaning it had in their custom, nor of what they intended by this word which had other possible meanings. That is why the Prophet ﷺdisapproved of him and declared himself innocent from his action.

The point of evidence from this (hadith) is the disapproval from the Prophet ﷺof Khalid's (may Allah be pleased with him) action, which means that statements and actions of the people have other possible indications, which hold rulings depending on the purpose and intent of the one who says it, and according to the custom of its usage, and not in the custom of the one who hears and understands it, that being, if the word in his custom is used contrary to the (custom) of the one who said it.

Ibn Hajar stated in (‘Fath Al -Bari’), when explaining this hadith; "His saying, “O Allah, I declare myself innocent of what Khalid has done." Al -Khattabi said: "He disapproved of him being hasty, and that he didn’t verify what they meant by their saying, 'Saba’na'." [End of quote]

It has also been reported in (Hāshiyya as-Sanadi 'alā sunan an-Nisāi), when commenting on the same hadith, "'saba'nā', meaning we left the religion of out forefathers and have entered the religion we are being called towards, and they intended by it, to enter Islam, because the disbelievers at that time used to call the muslims 'sābi', but as the word was not clear in Islam, khālid allowed their killing." [End of quote]

3- Burning the mus'haf/Qur’an, which is an act that bears two possible meanings:

a) Either he burnt it to preserve and maintain it like the one who finds a Mus'haf which has many missing pages, so he burns it, or like what 'Uthman ibn Affan did when he gathered the Masahif (plural of one mus'haf/Qur'an), and burnt all of them except one, as it was narrated in Sahih al- Bukhari by Anas ibn Malik -May Allah be pleased with him.

b) Or he burnt it because of disrespect and to belittle it, and this is clear and explicit kufr.

So, both individuals burnt the mus'haf- one who did it due to maintaining its greatness and worth and (the other) because of disrespect, but the difference between them is their intention and purpose, combined with (observation) of what his condition reveals during this act.

Therefore, we cannot rule him with kufr, without first asking their intention and purpose of the act, along with observation of what his condition reveals, which clarifies whether he is truthful or not.

4- A man stands near a grave with his hands raised in supplication/du'aa, and we see him from a distance, but are unable to hear his supplication:

Now, the act of this man has many possible indications, which are not clear, so we cannot pass the ruling (of kufr) upon him, except by hearing what he said, or by asking him, if we found he has finished from the supplication, as to what he was doing. We cannot rule upon him just because of his standing near the grave making supplication, because his action bears three possibilities:

a) He may be asking Allah to have mercy on the person in the grave and to forgive him.. and this is a rewardable deed for following the sunnah in supplication for the deceased Muslim.

b) Or he may have been calling out to Allah alone, but near the grave because he thought that if he make it near a grave the du'aa will be

accepted.. this is an innovator (mubtadi') who committed a muharram/ forbidden bid'ah and has fallen into major sin, but not kufr.

c) Or he was supplicating to the person in the grave in a matter no one is supplicated to except Allah, and so this one is a mushrik kafir.

The Third: going to the tāghut courts or the judicial council is not an act of kufr in itself.

So going to the courts of the taghūt or to the Judicial Council is a sign which possible meanings, and it's ruling depends on the intention and purpose of the one who went there.

The defendant who was summoned to court because of a lawsuit filed against him, and attended it, his act is possible of two things:

1 / Either he went satisfied with what that taghūt will rule, and he is determined to abide by his ruling and to obey him, and not to revolt against him, and he wants his rule and judgment (in the matter), and believes that this taghut is the one who has the right to rule in the rights of the Muslims, in their blood, their honour and their wealth; then this one is a kafir, due to his pleasure and contentment with kufr, his willingness to (act upon it), and due to his love for this ruling, because willingness to commit kufr and contentment with it is kufr akbar/major kufr.

2/ Or he went to defend himself and his right against the unjust ruling of the tawaghit upon himslef or his wealth if he is absent, or he went because he feared for himself, that he will be oppressed and harmed and punished for not attending, but he disbelieves in them, their laws and their legislations, and disavows their taghūts and judges. In this case, his presence does not fall within the meaning and definition of tahākum that we mentioned above..

This is because he did not request the rule of the taghut, nor did he strive in seeking it, nor did he make the taghut a judge in his matter, nor did he raise the matter to him as is the definition of the act of tahākum. So for this reason, his action does not enter into the definition of seeking tahākum, neither linguistically nor according to the Shar'i definition.

Therefore, the verses which Allah the Most High revealed in His Book, regarding those who sought judgment from the taghut, striving for it willingly, do not apply to such a person.

Those whom Allah described in His Book, who did not do what was required of them of kufr bit-tāghut, ny which they would have been muslims, but they were those who wanted the ruling of the taghut, so they requested and strove for his judgement and his decision in their matter.

Allah (Azza Wa Jal) said: *{Have you ˹O Prophet˺ not seen those who claim they believe in what has been revealed to you and what was revealed before you? They seek the judgment of false judges [taghūt], which they were commanded to reject. And Satan ˹only˺ desires to lead them farther away.}* [4:60]

Ibn Kathir said in his tafsir, "Allah chastises those who claim to believe in what Allah has sent down to His messenger and to the earlier Prophets, yet they refer to other than the Book of Allah and the Sunnah of His Messenger for judgment in various disputes." [End of quote]

So the one who understand this exact detail, many issues will become clear to him.

So the difference between the defendant and the claimant is that the claimant raised the matter to the taghut and asked for his ruling and made him the judge in his matter, and this is exactly what enters into the meaning of (judgment), so he fell into kufr with this action.

As for the defendant who was summoned, he only went to defend himself and his right from the overpowering of taghut upon himself with their rulings, or he was afraid of their oppression and punishments if he did not attend the court hearing, and he disbelieves in the taghut, their laws, their shirk, and their rulings other than Shari'ah, and he did not request the ruling of the taghut, nor made the taghūt a judge in his affair, and neither did he strive for it, nor does he approve of their

rulings, nor did he desire it, but rather he went with the deep hatred for it.

However, if after that he is pleased with the ruling of the taghut and liked that they decide in his matter, and he is determined to abide by the ruling of the taghut who will judge in this matter, willingly from his own accord, then this person is a kafir due to his satisfaction with kufr and his approval of the ruling of the taghut.

The fourth: It has been reported in the Sunnah, by which it has been proven that a taghut summoned some of the companions of the Prophet ﷺ, to a judiciary council, during the period when divine revelation was still being revealed, and they attended the gathering to defend themselves and to declare their innocence in that, and Quran was not sent down to refute their action, which is evidence of the permissibility of their action.

Before Al-Najashi embraced Islam, he was a taghut and a ruler of Abyssinia, and he summoned the Companions - their head - Ja`far bin Abi Talib to his council, to decide a lawsuit/accusation filed against them by Amr bin Al -Aas – before he embraced Islam -, so the Companions went to that council..

It has been reported in Musnad Imam Ahmad (may Allah haver mercy on him), he said, "Ya'qub narrated to us, he said my father narrated to us, on the authority of Muhammad bin Is'haq, he said Muhammad bin Muslim bin Ubaydillah bin Shihab narrated to me on the authority of Abu Bakr bin Abdul-Rahman bin Harith bin Hisham al-Makhzumi, on the authority of umm Salamah bint Abi Umayya bin Mughira, the wife of the Prophet ﷺ, she said, "When we arrived in the land of Abyssinia, we resided with the best of neighbours, the Negus. We were safe (to practice) our religion, we worshipped Allah, and we were not harmed nor did we hear anything we disliked. When the Quraysh learnt of this, they gathered among themselves and agreed to send two of their most wise men, to gift the Negus from the goods of Makkah, and the most admirable of what was given to him was broth, so they gathered for him a a large amount of it and they did not leave out any of his priests, except they gave him a gift. Then they sent Abdullah bin Abi Rabi'ah and Amr bin Al-'Aas and commanded them regarding their matter and said to them: "Give to every priest a gift before you speak to the Negus regarding them. Then present gifts to the Negus, and after that ask him to hand them over to you before he speaks to them." She said: "So they went out to the Negus, and we were there in a safe place with him, a good vicinity. There was not one priest left out, except they gave him a gift before they spoke to the Negus. Then they presented gifts to the Negus, and they said to every priest among them: "some foolish young men from ours have gone to the king's country and have forsaken the religion of their people, and neither did they enter into your religion. Rather, they came with an innovated religion, which neither we nor you know. The nobles of their people have sent us to the king in order to return them back. So when we speak to the king about them, advise him to hand them over to us and to not speak to them, for their people

know of their condition and are more aware of their fault." So they said agreed to that. Then they presented their gifts to the Negus, and he accepted it from them. They spoke to him and said: "O King, some of our foolish young men have come to your country and they have left the religion of their people, and neither did they enter your religion. Rather, they came with an innovated religion which neither we nor you know. We have been sent to you by the the nobles of their people, by their fathers, uncles, and clans, to bring them back, for they know of their condition and are more aware of their fault and they blamed them." She said: "There was nothing more hated by Abdullah Ibn Abi Rabi'a and Amr Ibn al-Aas than the Negus should hear their words." She said: "Then his priests who were around him said: "they are truthful O king. Their people know of their condition and are more aware of their fault, so hand them over, so that they are returned to them, their country and their people." She said: "The Negus became angry, then said: No, by Allah, I will not hand them over to them. Hardly a people came to me to seek refuge, settled in my country and chose me over anyone else. Not until I summon them and ask them regarding what these two have said about them. If they are as they say, I shall hand them over and return them to their people, and if they are other than that, I would prevent them from them, and I would be kind to them as long as they seek refuge with me."

She (Umm Salama) said: Then he sent for the companions of the Messenger of Allah ﷺ and summoned them. When his messenger came to them, they gathered and said to each other: What shall you say to the man when you go to him? He replied: "By Allah, We shall say what we know and what our Prophet ﷺ commanded us with, and what is

destined (for us) in that will pass." So when they came to him, the Negus called his bishops, and they spread their scriptures around him, he asked them saying: "What is this religion by which you have separated from your people, nor did you enter into my religion or into the religion of any of these nations?" She said: "It was Ja'far bin Abi Talib who spoke to him, and he said to him.. (hadith)."

This isnad is hassan, due to Muhammad bin Is'haq and he is saduq hassan al-hadith (his narrations of hadith are good), although he makes tadlees of isnad (i.e. conceals a flaw in the chain), but here he clearly declared that he heard this hadith from Az-Zuhri...may Allah have mercy on them.

This hadith is used to establish the argument for this point..

Therefore, the conclusion of this mas'alah is that whoever has a lawsuit/accusation filed against them and is thus summoned by the taghut, so he went to defend himslef, his right or his wealth, so that the taghut doesn't pass his unjust rulings against him, or he attended due to fear from the punishment/penalty of the taghut upon himself, due to his weakness and being oppressed if he doesn't attend, all the while he disbelieves in the taghut and their laws, their shirk, their falsehood and in that which they rule by other than the Shar'iah of Allah, then this is a permissible act and there is no sin upon him of attending, as it has been proven from the actions of the companions of the Prophet ﷺ who were in Abyssinia.

والله أعلى وأعل

Penned by Shaykh Abu Bara'a as-Sayf حفظه الله

الحمد لله بنعمته تتم الصالحات